

Artículo de investigación

Financing and support of employees of bankrupt companies in transport sector at municipal and state levels: national and international practice

Финансирование и поддержка персонала транспортных компаний-банкротов на муниципальном и государственном уровнях: национальный и международный опыт

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Abstract

Transport plays a major role in the socioeconomic development of countries. Efficient operation of transport enterprises is central to ensuring a country's competitiveness overall. Transport enterprises are a key instrument in the attainment of social and economic goals.

The purpose of this paper is to analyse the national and international practice of financing and support of the employees of bankrupt transport companies at the municipal and national level.

The paper highlights the relevance of financial support for the employees of bankrupt companies and analyses the issues of financial rehabilitation in the transport sector, as well as bankruptcy prevention instruments for transport enterprises, and international practice concerning the mechanisms of financial support of the employees of bankrupt companies. The paper offers a comparison of the country-specific aspects of financing and employee support in case of bankruptcy and outlines the conditions adopting such support in the transport sector at the municipal and national level.

Keywords: Transport, bankruptcy, financial support, bankrupt companies, social security, guarantee fund, compensation.

Abstract

Транспорт играет значительную роль в социально-экономическом развитии любой страны. Эффективное функционирование предприятий сферы транспорта необходимым условием обеспечения высокого уровня конкурентоспособности страны в целом. Предприятия транспорта являются важным средством достижения социальных и экономических целей.

Целью исследования является анализ национального и международного опыта финансирования и поддержки персонала транспортных компаний-банкротов на муниципальном и государственном уровнях.

В статье отмечена актуальность изучения проблем финансовой поддержки персонала компаний-банкротов. Проведен анализ вопросов финансового оздоровления в транспортной отрасли, инструментов предупреждения банкротства транспортного предприятия, механизмов обеспечения финансовой поддержки работников компаний-банкротов в международной практике. В работе осуществлено сравнение особенностей финансирования и поддержки работников на случай банкротства предприятия в разных странах мира, а также определены условия финансирования и поддержки персонала транспортных компаний-банкротов на муниципальном и государственном уровнях

Ключевые слова: транспорт, банкротство, финансовая поддержка, компании-банкроты, социальная защита, гарантийный фонд, компенсация.

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Introduction

Transport is one of the base industries of national economies and the sector's efficient operation is a requisite condition for the protection of public economic interests and improvement of living standards. With that, a key operational issue for the industry relates to ensuring sound working conditions for employees and staff and proper employer-employee relations. The development of efficient labour right protection mechanisms, particularly, in the transport sector, is key to the development profile of most countries.

It is worth noting that business operation in a market economy is associated with uncertainty and risks emerging when a company's business and economic operations fall behind the previous track record and expectations (Bezpalov et al., 2019; Manuylenko et al., 2018). In this context, the risk of employer bankruptcy, from the company perspective, is a financial risk, as it reflects inability to meet financial obligations to the employees. In turn, for an employee, the situation of insolvency of the employer leads to the emergence of an income loss risk in labour relations and particularly arrears in salary payments.

Thus, apart from economic problems, enterprise bankruptcies also result in serious social problems for the employees, such as job losses and overall inferior social standing of the population.

Initiated bankruptcy proceedings damage employee security at the respective enterprises, as a result of disruption to individual needs that used to be satisfied by job and pay availability.

Such damage to the social security levels of the employees at bankrupt enterprises erodes their social potential as they no longer have access to fulfilling their and their families' vital requirements, leave alone attainment of new qualification levels, medical care, leisure and development in general. Therefore, following an involuntary job loss, arguably, a former employee of a bankrupt enterprise loses adaptation to the future and normal lifestyle.

Literature Review

Researchers have pointed out that the efficient development of the transport complex as a requisite condition of stable operation across industries can be only achieved with enterprises of the complex having proper economic security potential of their own as a sufficient protection

against against adverse effects and environmental threats and a basic condition for their successful development both in the national and international markets (Makhneva, 2013; Gasanov, & Zhironkin, 2014; Tkachev, 2017; Chebotareva et al., 2019; Danilina et al., 2017; Jukova et al., 2019; Protection of Workers' Claims (Employer's Insolvency) Convention).

According to I. S. Turevsky (2005), the entities of the transport complex are particularly vulnerable as a result of the derivative secondary nature of demand in their services, considerable levels of costs in asset maintenance and higher financial risks of their investment.

For now, the transport industry generally fulfils the requirements of the national economy and population in transport services, however, the quality standards and efficiency in passenger and freight transit, innovation and technical industry development, investment attraction for renovation (Russian transport sector survey in 2018) and the development of an optimal financial environment to prevent bankruptcies or mitigate adverse effects need to be addressed by researchers.

The issues of bankruptcy prediction and financial rehabilitation in the transport industry were studied by such researchers as V. V. Plenkina, Iu. A. Khagai, L. V. Goloshchapova, E. N. Isaeva, A. V. Shokhnekh and others.

In their papers, they established that insufficient renewal of fixed assets and their inferior state falling behind the current requirements (Russian transport sector survey in 2018), slow advances of transport technologies and weak links with the production, trade, storage and customs technologies, underdevelopment of informatisation in the transport process and weak information ties with other sectors of the economy (Goloshchapova, 2013; Novolodskaya et al., 2019; Rogatnev et al., 2019; Nurgaliyeva et al., 2018), as well as low efficiencies of financial and economic mechanisms stimulating investment represent only a small fraction among the factors negatively affecting the sector's development and operation (Rogachev, 2017). According to E. N. Isaeva, "the obsolete and worn-out vehicle fleet structure and fleet specialisation ill-suited for the existing and projected freight traffic has brought transport enterprises to the state of bankruptcy" (Isaeva, 2015, p. 78).

V. V. Plenkina identifies the following instruments to prevent bankruptcy:

- Financial and economic tools targeting the prompt improvement of financial performance through pricing optimisation, improved utilisation of financial resources, cost-cutting, collection of receivables, cash flow optimisation, etc.;
- Organisational and technological tools targeting improved utilisation of available resources through organisational impacts (streamlining technological processes, organisational structure optimisation, adjustment of HR policies, etc.);
- Analytical tools targeting risk prevention through permanent performance monitoring (Plenkina et al., 2012).

According to Iu. A. Khagai, an optimal bankruptcy prevention condition at transport enterprises is shaped at the mega level of state governance and comprises the following elements: avoidance of unnecessary business damage during the government's regulatory influences; obligatory and timely establishment of a legal framework of the transport sector; maximum leveraging of market potential for public-private partnerships; guaranteed resource support of the transport industry; preemptive identification of conditions and factors threatening normal operation of the transport industry (Khagai et al., 2012).

With that, the issues of social protection of employees at bankrupt enterprises have been and still remain a subject of scholarly research.

For instance, O. Lukason and R. Hoffman approach bankruptcy as a kind of a stress field attracting counter or sometimes conflicting interest of bankruptcy sides, the debtor, creditors and third persons engaging in relations with the debtor. However, one should also "keep in mind the existence of various public interests, including the development interests of public production industries, social needs of employment, etc." (Lukason, & Hoffman, 2014, p. 84).

D. Mullens (2014) argues that the institute of bankruptcy should ensure the protection of interests of both creditors and employees, i.e., there has to be a balance of diverse interest vectors.

Researchers believe that the enterprise bankruptcy risk is a direct factor of disruption of the normal social state of people as it results in lost incomes for the employee and their family (Ooghe, & De Prijcker, 2008). Bankruptcy as a social risk means the potential danger of worsening of employees' wellbeing as a result of the inability to meet monetary liabilities, obligatory payments and social programs.

Therefore, the normal operation of an enterprise means the employees can be socially secure. Unwelcome as it may be for some employers, current legislation provides for obligatory social security provision to all employees. However, despite the multiple forms of protection, some of them fail when the enterprise becomes insolvent and bankrupt.

For example, A. S. Ignatenko (2014) believes that after operations are discontinued at an enterprise, its employees lose the following types of social protection consistent with the current legislation: social insurance for public servants, insurance in case of ardour and harmful labour conditions, accident benefits, insurance for occupational diseases, collective labour agreement compliance. All the above types of protection were directly linked to the job and, since labour agreements are cancelled during bankruptcy proceedings, the job is lost together with the respective forms of security.

Practice in the world's leading countries allows a conclusion that the regulation systems of social and labour relations during organisational insolvency are different in their nature and oriented at different preferences. As a rule, they provide for measures to have labour rights fulfilled in terms of payment of the amounts in arrears related to salary and certain social payments under the collective labour agreement. The mechanisms to ensure such payments are diverse: (a) court proceedings on cancellation of the collective and labour agreements; (b) social plans partially included in the collective agreements of social partners; (c) guarantee funds for compensations to employees, established with the assistance and direct participation of government authorities; (d) system of privileged priority claims for salary payments, etc. (Peng, 2004).

Such practice is reflected in the 1992 Convention No. 173 of the International Labour Organisation (ILO) providing for both possibilities of protection of workers' claims: Part II provides for protection of workers' claims by establishing a

privilege and Part III – by leveraging a guarantee institution.

One of the key differences of the guarantee institute from the privilege institute is the collective responsibility principle: while in the privilege-based protection, every employer is independently liable for its insolvency (within its available assets), meanwhile the guarantee institute provides for insolvency risk distribution among all employers.

Research hypothesis: the most effective institutes of financial support of employees in case of employer bankruptcy is the operation of guarantee institutions (funds).

Proposed Methodology

General Description

To address the research objective, we find it necessary to refer to the international practice of providing social security to employees in case of employer bankruptcy in the transport sector with a view to introducing the most acceptable terms of social security in Russia.

The following research methods were used:

- Theoretical: analysis and review of theoretical and methodological research sources on the subject;

- Empirical: 1. comparisons of the aspects of financing and support of employees in case of employer bankruptcy across nations; 2. expert survey for establishing the conditions of financing and support of employees of bankrupt

enterprises in the transport sector at the municipal and national level.

Thirty-three experts took part in the discussion and comparison and the expert survey, specifically, 11 officers of transport companies, 11 municipal and regional government officials and 11 staff of social security authorities.

Algorithm

The first stage of the research involved a review of scholarly sources concerning the issues of financing and support of the employees of bankrupt companies in the transport sector at the municipal and national level.

The second stage comprised comparisons between the aspects of financing and support of the employees in case of employer bankruptcy across nations and an expert survey for establishing the conditions of financing and support of the employees of bankrupt enterprises in the transport sector at the municipal and national level.

Flow chart

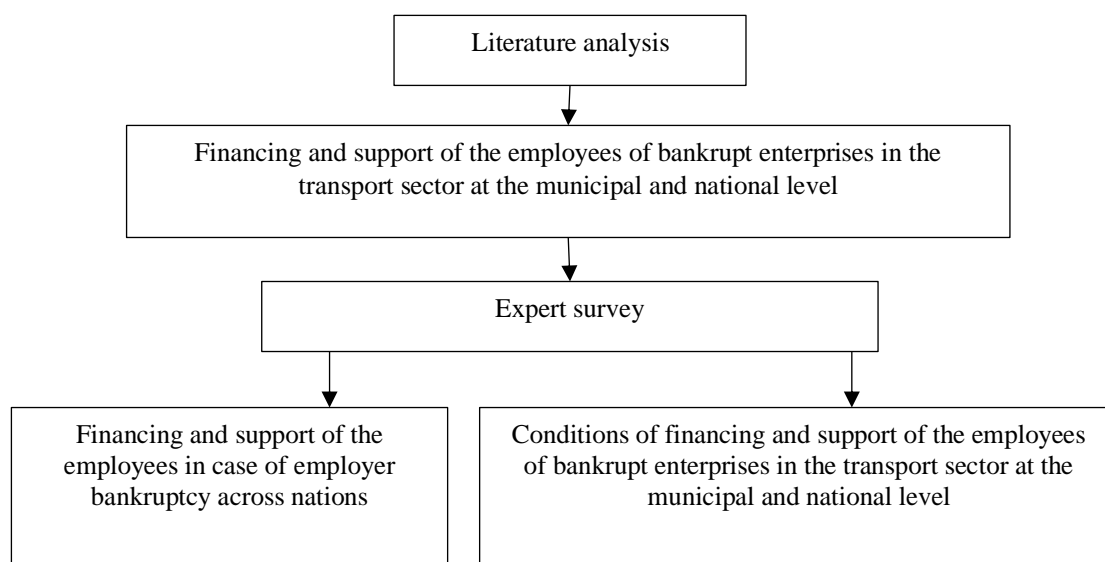


Figure 1. The methodology of research

Results

Based on the findings of the expert survey, one can describe existing common international

models of financing and support of employees of bankrupt enterprises, subject to certain country-specific aspects (Table 1).

Table 1. Aspects of financing and support of employees in case of employer bankruptcy across nations

Country	Models of financing and support of employees of bankrupt enterprises	Level of support
Brazil	All employers contribute approximately 8% of the employee's salary to a banking account opened in his or her name, which makes for the accumulation of a one-month salary amount over a year. The accounts are income-bearing and can be withdrawn by the employee subject to the emergence of circumstances provided for by law (particularly in case of employer bankruptcy)	Private (at the employer's expense)
USA	Salary payment guarantee is provided to all enterprises winning contracts for construction in the public sector. Such enterprise is obliged to guarantee salary compensations in case of insolvency. Such guarantee system is viable subject to the following conditions: the guaranteed amounts are placed in government securities (or other securities); guarantees are provided by an independent institution where employees can apply in case of non-payment of their claims to the entrepreneur	Public-private
Germany	Compensation payments to the employees in case of employer bankruptcy are handled by the Federal Employment Agency. Financed from the budget. Employers contribute annual payments to the budget.	Public-private
Belgium	Compensation payments are handled by local employment centres. Financed from local budgets. Local authorities set the rates of obligatory contributions to be made by employers.	Municipal
Denmark	The guarantee system is operated by the pension fund. Funds are accumulated from the employers' pension contributions.	Public-private
Finland	The Ministry of Employment is responsible for managing the guarantee fund. Funds are accumulated from employer contributions.	Public-private
Sweden	The guarantee system is operated by local authorities. The funding procedure varies across provinces, however it is always employers' funds	Private-municipal
Spain	Extra-budgetary guarantee fund, which is an independent and separate institution. The fund is financed from income generated by state and private enterprises engaging labour. The contributions are calculated at the rates of 0.4% of the salary level but payments are exclusively borne by enterprises. Besides, such fund has the right to get proceeds from the sales of assets of bankrupt enterprises to finance employee compensation payments.	Public-private
Greece	The guarantee fund is financed from the budget. No additional contributions are charged from employers.	Public
Portugal		
Netherlands	The extra-budgetary guarantee fund is formed from both employer and employee contributions	Public-private
Israel	The extra-budgetary guarantee fund is formed from tax amounts but operates as a corporation Compensation payments cover salaries (up to 12 months); vacation allowances; sick leaves; annual bonuses; clothing allowances and direct provision of clothing and severance pay. There is a maximum limit of payments calculated as the tenfold average monthly salary in Israel. Claims are lodged by the employees with the court-appointed receiver	Public-private

All of the above models provide for guarantee and compensation payments and assistance to some extent. According to Russian experts, Russia should adopt the international practice and come up with its own model of financing and support of employees in case of employment termination on all grounds, specifically in case of employer bankruptcy. The model should be further established in the legal framework.

Discussion

According to the findings of the research, the analysis of international practice of the existing guarantee systems for compensation payments in case of employer insolvency shows the quality of both commercial (private: social factoring or obligatory insurance) and public (extra-budgetary fund or a state corporation) models of financing and support of employees in case of employer bankruptcy. Experts point out that commercial guarantee mechanisms involve relatively high risks of financial instability and, in some cases, fail to provide full protection of workers' claims.

The experts show that a majority of the EU countries leverage the so-called European model, where the state is responsible for proper operation of the guarantee institution, while such guarantee institution may be administered by either public or private bodies. With that, the sources of funding for the guarantee institutions are contributions from employers for social insurance, or public budget funds, and investment income.

In the Russian context, as the experts believe, the principal condition for financing and support of the employees of bankrupt companies is the development and adoption of a bill on the establishment of the Guarantee Fund of workers' claims in case of employer insolvency (hereinafter – the Fund), which should govern the functioning of the said institution and set the rules of its establishment, financing and operation, etc. With that, the introduction of guarantee schemes will require legal clarification of the issues of simultaneous operation of salary protection schemes based on privileges and payment guarantees.

The Fund should be established and operated as a public, economically independent, non-profit institution acting under the approved Fund Regulation, setting forth its objectives, organisational structure and principles. The Fund's resources should not be included in the

federal budget of the Russian Federation and the Fund may not be declared bankrupt.

Simultaneously, the proposed measures concerning workers' claim guarantees in case of employer insolvency should be implemented comprehensively and accompanied by a practical government policy to prevent the withdrawal of companies' working capital, the improvement of VAT refund procedure and activation of social dialogue on employment and job creation.

The responding experts also believe that guaranteed payments of salaries and compensations to employees of insolvent enterprises being wound up in bankruptcy proceedings should be ensured via enterprise funds funded from profits during normal operation. It would help to cover the risks of employment termination, particularly in winding up of the enterprise and other force majeure and extraordinary circumstances. It is worth noting that this possibility is only viable if the amount of such contributions can be set differently for different categories of enterprises to make sure no damage to business is caused that way. A positive aspect of such scheme is that when the enterprise becomes insolvent, workers get insured salaries and compensations in full in accordance with legal requirements and provisions of the collective agreement. The scheme is funded from the previously established Fund and runs without awaiting, and irrespective of, the outcome of the bankruptcy proceedings.

This scheme will be a positive for all creditors, as chances are they will be more likely to get paid from the proceeds of the debtor's asset disposal as employees are excluded from the sequence because their claims have been already settled.

Conclusion

The international norms in case of employer bankruptcy involve two systems of worker support: (a) privileged priority settlement of claims of the redundant employees in respect of salaries, guarantees and compensations under labour laws and (b) establishment of guarantee insurance funds.

The findings of the research confirmed the hypothesis that the most effective institutes of financial support of employees in case of employer bankruptcy are the operation of guarantee institutions (funds).

It is, though, worth noting that the fund is not responsible for paying any debt owed by the

bankrupt employer to the employee on a non-repayable basis. The fund's principle is as follows. In case of bankruptcy, employees get rights of claim to the fund of salary outstanding as at the opening of bankruptcy proceedings. When the payment liability is fulfilled in the amount usually limited within a specific period and figure, the fund gets the right to claim the repayment of the amount from the debtor in privileged priority order. Such system ensures maximum repayment and, consequently, saving of the fund's resources. The inclusion of the fund within the existing public insurance system helps to cut down the administrative and operational costs.

The provision of financing and support of the employees of insolvent enterprises may not prevent practical challenges emerging in employment termination. Further research is needed to identify solutions to these problems.

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